

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRED J. TAYLOR,

No. C 04-0356 JF (PR)

Plaintiff,

ORDER GRANTING DEFENDANTS'
MOTION TO STAY DISCOVERY;
GRANTING PLAINTIFF'S MOTION FOR
SECOND EXTENSION OF TIME;
FURTHER SCHEDULING ORDER

v.

RAY MORSE, et al.,

Defendants.

(Docket Nos. 30, 34)

Plaintiff, proceeding pro se, filed the instant civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has been granted leave to proceed in forma pauperis. The Court initially dismissed the complaint with leave to amend. Plaintiff then filed an amended complaint. The Court ordered service of the amended complaint on the Defendants. On December 28, 2007, Defendants filed a motion for summary judgment. On January 24, 2008, the Court granted Plaintiff's motion for extension of time to file an opposition to Defendants' motion. Defendants filed a motion to stay discovery pending a ruling on their motion for summary judgment. Plaintiff has filed an opposition to Defendants' motion to stay discovery and a second request for an extension of time to file an opposition to the motion for summary judgment. Defendants have filed a reply to Plaintiff's

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1 opposition to the motion to stay discovery. The Court will GRANT Defendants' motion to stay
 2 discovery pending a ruling on the motion for summary judgment. The Court will GRANT Plaintiff a
 3 further extension of time to file opposition to the motion for summary judgment.

4 DISCUSSION

5 A. Motion to Stay Discovery

6 After a careful review of the record, the Court concludes that a stay of discovery is in order.
 7 It is well settled that a stay of discovery should be granted until the threshold question of qualified
 8 immunity is decided. Crawford-El v. Britton, 523 U.S. 574, 598 (1998). "When a plaintiff files a
 9 complaint against a public official alleging a claim that requires proof of wrongful motive, the trial
 10 court must exercise its discretion in a way that protects the substance of the qualified immunity
 11 defense. It must exercise its discretion so that officials are not subjected to unnecessary and
 12 burdensome discovery or trial proceedings." Id. at 597-98. Accordingly, Defendants' motion to
 13 stay discovery is GRANTED (docket no. 30). The stay will remain in effect until the Court issues
 14 an order on the motion for summary judgment. If the Court denies qualified immunity, the stay will
 15 be lifted and the parties will have the opportunity to engage in discovery and to file supplemental
 16 pleadings with respect to any remaining grounds for summary judgment.

17 The Court is mindful that its stay on discovery will require some relaxation of the ordinary
 18 rules of admissibility of evidence as to affidavits which may be used to oppose summary judgment
 19 here. See DiMartini v Ferrin, 889 F.2d 922, 926-27 (9th Cir. 1989), amended, 906 F.2d 465 (9th
 20 Cir. 1990), cert. denied, 501 U.S. 1204 (1991). Plaintiff is advised, however, that merely asserting
 21 the need for discovery in his opposition papers will not defeat summary judgment. At minimum,
 22 plaintiff must comport with Federal Rule of Civil Procedure 56(f) and, by affidavit filed in
 23 conjunction with his opposition, show what particular facts he expects to discover and how those
 24 facts would preclude summary judgment. See Mackey v. Pioneer Nat'l Bank, 867 F.2d 520, 523-24
 25 (9th Cir 1989).

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 Order

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1 B. Plaintiff's Request for Extension of Time

2 Plaintiff has filed a second request for an extension of time in which to file his opposition to
3 Defendants' motion for summary judgment. The Court concludes that Plaintiff has shown good
4 cause for such extension. Accordingly, Plaintiff's request for an extension of time (docket no. 34) is
5 GRANTED.

6 **CONCLUSION**

7 Defendants' motion to stay discovery is GRANTED (docket no. 30). Plaintiff's request for
8 an extension of time (docket no. 34) is GRANTED. Plaintiff shall file his opposition, and serve a
9 copy on Defendants' counsel, **within forty-five (45) days** of the date of this order. Defendants shall
10 file a reply brief no later than **fifteen (15) days** after the date Plaintiff's opposition is filed.

11 It is Plaintiff's responsibility to prosecute this case. All communications by the
12 Plaintiff with the Court must be served on Defendants, or Defendants' counsel, by mailing a true
13 copy of the document to Defendants or Defendants' counsel. Plaintiff must keep the Court
14 and the parties informed of any change of address and must comply with the Court's orders in a
15 timely fashion. Plaintiff's failure to do so may result in the dismissal of this action for failure to
16 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

17 IT IS SO ORDERED.

18 DATED: 4/22/08

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JEREMY FOGEL
United States District Judge